IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 16 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HEIR OF MUKUNDRAI N MEHTA

Versus

KIRITKUMAR J TRIVEDI

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Appearance:

Ms.Smita S. Panchal for Mr.N.D.Nanavati for Petitioners

MR BD KARIA for Respondent No. 1

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 24/11/2000

ORAL JUDGEMENT

1. This is tenant's Revision against concurrent judgment and decrees of the two courts below u/s. 29(2) of the Bombay Rent Act.

2. Brief facts are that the respondent - landlord had let out the demised premises to the defendant revisionist No.1 on monthly rent of Rs.125/- on 1.11.1978. The defendant - revisionist No.2 stood surety for payment of rent by the defendant - revisionist No.1. All the taxes were to be paid under the Agreement by the defendant No.1 to the Authorities concerned and the taxes were not included in monthly rent of Rs.125/-. Rent from 1.7.1979 to 31.1.1980 fell due from the defendant No.1 whereafter he was served with notice on 23.2.1980. He, however, gave evasive reply to the notice and did not comply with the notice hence Suit for eviction was filed.

3. The tenant in chief defendant No.1 - revisionist filed written statement in which he denied all the allegations made by the landlord. At one place he denied even the tenancy which was admitted in subsequent portion of the written statement. The material grounds of defence are that it was not monthly tenancy but the rent was payable yearly hence it was yearly tenancy. In that continuation it was pleaded that the notice is invalid. Execution of rent note was also denied by the revisionist No.1. Payment of rent was alleged by this revisionist. He pleaded that he had paid one year's rent in advance and obtained receipt which was lost in unprecedented flood along with other documents. The rent was alleged to be excessive.

4. The surety - defendant No.2 also contested with the same grounds with added defence that he stood surety only for the rent for a period of 12 months.

5. No oral or documentary evidence was adduced by the defendants. They also did not enter witness box. Consequently relying upon the evidence adduced by the plaintiff landlord the Suit was decreed by the trial court.

6. The tenant feeling aggrieved preferred an Appeal which was also dismissed hence this revision by the tenant as well as by the Surety. In the impugned decree liability of the surety - revisionist No.1 has been made joint and several to the extent of Rs.7250/-.

7. In this revision none appeared for the revisionist though the matter was revised and called out twice at intervals. There is no prohibition in hearing and deciding the Revision on merits after looking to the record and after hearing the Counsel for the respondent. In this old Revision of 1987 it seems that the revisionists are not interested hence none has thought it

proper to put appearance and argue the revision till 1.15 p.m. today. As such record was examined so also the Judgments of the two Courts below.

8. Since it is a case of concurrent findings recorded by the two courts below and these findings are neither illegal nor perverse interference in revision will not be justified. Even detailed examination of the two judgments would indicate that there is no illegality or perversity in the findings recorded by the two Courts below. Still because the revisionists are absent those findings have been tested on legal touch stone and also on merits.

9. The landlord's case was u/s.12(3)(a) of the Bombay Rent Act. In order to succeed the landlord was required to establish four things. The first is that it was a case of monthly tenancy where the rent was payable month by month. On this point there was half hearted defence of the tenant in chief that it was annual tenancy. However, annual tenancy could be created only by registered instrument and not by mere pleading. Strangely enough the defendant No.1 did not care to enter witness box to substantiate his defence that it was yearly tenancy. As pointed out earlier yearly tenancy could not be created except by registered instrument. There is no registered instrument in the case. On the other hand the rent note was executed which was signed. Execution of the rent note was denied by the tenant, but he did not enter witness box to deny on oath his signature on the rent note or the execution of the rent note by him. In these circumstances the two courts below were justified in holding on the basis of the landlord's evidence and the rent note that it was a case of monthly tenancy.

10. The landlord has specifically pleaded that Rs.125/- p.m. represented only the rent and it did not include the taxes. On the other hand under the Agreement between the landlord and the tenant the taxes were to be paid by the tenant to the Authority directly and no adjustment was to be given on such payment by the landlord. Consequently also it cannot be said that the tenancy was annual and not monthly. Thus, for the reasons stated above I do not find any illegality in the concurrent findings of the two Courts below that it was a case of monthly tenancy.

11. The second requirement for getting a decree of eviction is that there was no dispute regarding the standard rent. In the written statement it was pleaded

that the rent was excessive, but that is not enough for showing that there was dispute of standard rent. It has been observed by the lower Appellate Court that the dispute of standard rent was raised on the very day when the tenancy was entered into and this dispute was resolved by the competent Court. The Lower Appellate Court further found that resolution of this dispute by the competent Court was not the result of any fraud, coercion or misrepresentation. Consequently, on the date when the notice was served there was no subsisting dispute regarding standard rent. After receiving the notice the defendant No.1 did not raise dispute of standard rent within a month thereof. Consequently half heartedly raising such dispute in the written statement cannot be considered as existence of dispute of standard rent. Thus, the two courts below were justified in holding that there was no dispute of standard rent.

12. The 3rd and 4th conditions to be fulfilled by the landlord are that the tenant was in arrears of rent exceeding six months which he failed to pay within a month of service of notice on demand. On the point of quantum of arrears of rent there is again concurrent findings of the two courts below that the defendant fell in arrears of rent for the period exceeding six months. This finding of fact is not to be interfered by the revisional Court. The plea of payment of rent for one year in advance could not be established by the tenant. He did not enter the witness box to adduce evidence in the nature of secondary evidence that the original receipt showing payment of one year's rent in advance was lost in flood. There was thus no evidence from the side of the tenant that the rent for a period of one year was paid in advance. Reliance was placed on receipt Ex.54 which was rightly discussed by the two Courts below and the two courts below rightly concluded that the rent exceeding six months fell due from the tenant - defendant No.1. Thus, on this point also no interference in this revision is required.

13. The last condition is that the tenant failed to pay the arrears of rent exceeding six months within a month of service of notice of demand. On this point also there is concurrent findings of fact recorded by the two Courts below. Since no evidence was adduced by the tenant in chief that he had paid any amount after receipt of notice the said finding requires no interference.

14. Thus, all the conditions of Section 12(3)(b) of the Rent Act were established by the landlord.

15. It appears from the Judgment of the trial Court that the Trial Court answered in negative the tenant's plea that he was entitled to protection of Section 12(3)(b) of the Act. This finding is also correct. Once it is found that the landlord established all the ingredients of Section 12(3)(a) the Courts below had no option, but to decree the Suit for eviction and the tenant lost protection of Section 12(3)(b) of the Rent Act.

16. In the result I do not find any ground for interference in this revision. The revision is therefore devoid of merit which must fail.

17. The Revision is hereby dismissed with no order as to costs.

18. When the Judgment was dictated in open Court, at 1.25 p.m. Ms.Smita S. Panchal appeared on behalf of Shri N.D.Nanavati for the Revisionist. She requests that the tenant - revisionist may be granted six months time for vacating the premises. This offer is accepted by Shri B.D.Karia, learned Advocate for the respondents. As such the revisionist No.1/1 shall hJJJ

possession of the demised premise to the landlord respondent on or before 31.5.2001 with further condition that during this period the entire arrears of rent and mesne profits shall be paid to the respondent - landlord, if not already paid, and further the revisionist shall not transfer possession of the disputed accommodation to anybody else except to the landlord.

sd/-

Date : November 24, 2000 ( D. C. Srivastava, J. )

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